IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2353 OF 2006
ALONGWITH
CRIMINAL WRIT PETITION NO.2354 OF 2006

Mr. Surojit Sen & Anr. .....Petitioners.

V/s

M/s. Fiat India Ltd. and anr. ..... Respondents.

Mr. Prashant Chande i/b Dunmor Sett for Petitioners.

Mr. S. R. Chitnis, Senior Advocate, with Ms. V.R. Raje i/b Crawford Bayley & Co. for Respondent No.1.

Mr. Y.S. Shinde, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 18th September, 2007

P.C.:

1. Both these Petitions can be disposed of by a common order as the issue involved in both these Petitions is identical.

2. Heard the learned Counsel appearing on behalf of Petitioners and the learned Senior Counsel appearing on behalf of Respondent No.1.

3. By this Petition, Petitioners take exception to the order of issuance of process passed by the Magistrate on a complaint filed by Respondent No.1 herein for an offence

punishable under section 138 of the Negotiable Instruments Act.

4. It is the case of Petitioners herein that there was a dealership agreement between the Company and Respondent No.1 and that when the said agreement was entered into, blank cheques were given by Petitioner No. 2 - Company in favour of Respondent No.1. It is stated that Respondent No.1 deposited the said cheques after filling in the amount which is shown on the said cheques and these cheques were dishonoured. It is submitted that a bank guarantee of an amount of Rs 35 lakhs was also issued in favour of Respondent No.1. It is submitted that, on the said cheques date is mentioned as 30/05/2000. The cheques were deposited in July, 2000 and the statutory notice was issued on 22/07/2000 and the complaint was filed in August, 2000 and the bank guarantee was invoked on 05/09/2000. It is submitted that the sequence of events itself suggests that the said cheques were blank cheques. Since Respondent No.1 had invoked the bank guarantee in September 2000 and this amount was duly secured by the bank guarantee, there was no necessity of depositing the said cheques in July, 2000. It is submitted that this indicated that the cheques were blank cheques. The learned Counsel further invited my attention to the correspondence between the Solicitor of Respondent No.1 and Petitioner No.2 - Company. He invited my attention to the outstanding amount which was at the foot of the said account which was partly

reproduced in the said letter. He submitted that the total outstanding was Rs 57,18,755/- and the total amount of five cheques was Rs 16,81,882.32 and in other case it was Rs 53,14,019.31 and the total amount allegedly due in both the complaints was Rs 69,95,841.63. It is submitted that this also indicated that the cheques given were blank cheques. The learned Counsel appearing on behalf of Petitioners relied upon the following judgments:-

1.	**AIR 2005 (SC) 359**	**- State of Orissa Vs. Debendra Nath Padhi**
2.	**2007 Cri.LJ.1875 (Madras High Court)**	**- M.M.Sabharwal & Anr V/s. M/s Mahalakshmi Real Estates and Investments (P) Ltd.**
3.	**2003 ALL MR (Cri) Journal 105 (Andhra Pradesh High Court)**	**Avon Organics, Hyd. Ltd. V/s. Poineer Products Ltd. & Ors.**
4.	**Judgment passed by this Court (Coram: V.M. Kanade, J.) dated 4/8/2005**	**- Shri Ramdas Anant Naik Vs. Shri Jacob Fernandes.**
5.	**AIR 1937 Lahore 816**	**- A.R. Dower V/s Sohan Lal Anand and Others.**
6.	**1996 Comp. Cases Vol.86 (Andhra Pradesh High Court)**	**- Taher N. Khambat V/s Vinayak Enterprsies and Others.**
7.	**AIR 1986 Andhra Pradesh 120**	**- Jayantilal Goel V/s. Smt. Zubeda Khanum**
8.	**2000(3) Crimes 602 (Gujarat High Court)**	**Shanku Concretes Pvt. Ltd and Others V/s. State of Gujarat and Anr.**

5. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of Petitioners at this

stage. The question whether cheques were blank or given towards the legal debt or liability is a question of fact which cannot be gone into at the stage of issuance of process. Section 139 creates a legal presumption in respect of existing legal debt or liability which presumption is rebutable and drawer of the cheque has to rebut the said presumption by leading evidence or by bringing on record the true facts in cross-examination of the complainant. The ratio of the judgments on which reliance is placed by the Counsel appearing on behalf of Petitioners will not apply to the facts of the present case since, in those cases, the evidence had already been adduced and the finding had been recorded that the cheques were either issued as a security or blank cheques. Hence, only after the parties lead evidence, the Trial Court would be in a position to record a finding on this question and, thereafter, the matter can be decided. Therefore, it is not possible to interfere with the order passed by the Magistrate for issuance of process. Both the Petitions are accordingly dismissed in limine.

(V.M. KANADE, J.)